

AWARD OF LEASE

State agriculture and grazing lease No. 5333 contains all of section 25, Township 35 North, Range 44 East in Daniels County. It is comprised of 306.8 acres of cropland, 60.1 acres enrolled in the Conservation Reserve Program and 273.1 acres of grazing land. The lease was held by Mr. Herb Brandt and the current term expired February 28, 2007.

During the Lease renewal process, staff from the Department's Glasgow Unit Office recommended that the lease not be renewed because the lessee had consistently failed to properly manage the cropland as required under §77-6-113(1), MCA. Mr. Brandt appealed that decision and requested a hearing before the Director. Based on evidence and testimony presented at that hearing, the Director issued an order upholding the decision to not renew the lease to Mr. Brandt.

The land was subsequently advertised for competitive bids, and the Department received 4 bids. The bidders and bid amounts are as follows:

Herb Brandt \$7.97/AUM and 34% Cropshare or \$15.00 per acre, which ever is greater
Troy Larson \$9.50/AUM and 1/3 Cropshare
Murray Dighans \$7.87/AUM and 27% Cropshare
Kent Kleeman \$7.87/AUM and 1/4 Cropshare

Because Mr. Brandt was the high bidder, the Director recommends that as provided in §77-6-202, MCA, the Land Board reject Mr. Brandt's bid for the reasons set forth in the Directors order dated April 23, 2007 (summary attached), and that the lease be awarded to the 2nd high bidder, Troy Larson, at the rate he bid.

Summary of findings to revoke Lease Renewal right of Herbert W. Brandt on State Lease 5333

A state lessee is required to manage the state land consistent with the principles of good stewardship and in a husbandmanlike manner that will produce abundant yields. To that end MCA § 77-6-113(1) in part provides that:

(1) It shall be a condition of all leases of agricultural or grazing state lands that:

(a) in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall handle the leased land with the view of maintaining its productivity and minimizing wind and soil erosion and noxious weeds and planting crops with a view of securing the greatest yields of good quality;

A lessee who fails to comply with these requirements may lose their renewal preference right. ARM 36.25.117(3)(b) provides that:

(b) If, during the previous lease term, an existing lessee has violated any condition set out within [77-6-113\(1\)](#), MCA, the lessee shall not have the right to renew the lease or match any other bids submitted.

In the hearing before the Director, the DNRC Trust Lands Division provided substantive evidence that Mr. Brandt had not been managing the agricultural acres of Lease 5333 in accordance with the requirements of the lease and associated rules. This included numerous documented examples of Mr. Brandt failing to control weeds in growing crops and summer fallow acres along with very low lease payments for the agricultural acres.

The Order issued by the Director stated the “administrative record contains abundant evidence that the Lessee has subjected the Lease to incidents of mismanagement and violations of its terms since 1998. There has been a lack of management, poor crop production and low economic return.” And, the record further “establishes that DNRC has repeatedly given the Lessee reasonable opportunities to bring the Lease back into compliance.” The evidence indicates that no notable improvements were made in the management of the tract through the period.

In Section III Conclusions of Law Subsection 10 of the FINDINGS OF FACT, CONCLUSIONS OF LAW and ORDER Director Sexton states: “Because the field conditions upon the Lease did not meet and have not met the agricultural management standards set out within MCA § 77-6-113, I hereby conclude that, pursuant to ARM 36.25.117(3)(c), the Lessee’s right to renew and exercise the preference right to re-lease the Lease was properly revoked.”

The associated Order provides: “Based on the evidence presented at hearing, IT IS HEREBY ORDERED that the right of former Lessee, Herbert W. Brandt, to renew and exercise the preference right in bidding upon State of Montana Agricultural Lease No. 5333 is hereby revoked pursuant to ARM 36.25.117(3).”